

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARIE BARSCH,

Plaintiff,

v.

ONDA BEAUTY, INC.,

Defendant.

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Civil Action No.:

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, MARIE BARSCH (“Barsch” or “Plaintiff”), brings this complaint in the United States District Court for the Southern District of New York against ONDA BEAUTY, INC. (“Onda” or “Defendant”), alleging as follows:

PARTIES

1. Plaintiff is an experienced commercial photographer of twenty years, specializing in on location beauty and fashion photography. Plaintiff resides in Blanchester, Germany.
2. On information and belief, Defendant is a Corporation existing under the laws of the State of Delaware, with its headquarters in New York, New York; Defendant curates and sells the most trusted, clean, and conscious beauty brands and their standout products.”¹ Defendant owns, operates, and is solely responsible for the content on its commercial website, www.ondabeauty.com, and corresponding social media.

¹ www.ondabeauty.com

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.
6. Defendant is subject to personal jurisdiction in New York.
7. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff captured the photograph, “DSC_4994,” (“Copyrighted Photograph”) on February 19, 2019, in Cape Town, South Africa. [Exhibit 1].
9. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on September 14, 2020 (Registration No.: VA 2-217-810). [Exhibit 2].
10. On January 26, 2021, Defendant copied and posted Copyrighted Photograph to the Defendant’s Instagram feed, www.instagram.com/ondabeauty (Last visited April 1, 2021).
11. Defendant posted Copyrighted Photograph to the following URL(s):
 - www.instagram.com/p/CKhSZLUIXfZ (Last visited April 1, 2021). [Exhibit 3].
12. Defendant used Copyrighted Photograph to market and sell its products, including “exfoliants” and “treatments.”

13. Defendant copied and posted Copyright Photograph without license or permission of Plaintiff.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

14. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
15. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid and complete Certificate of Copyright Registration by the Register of Copyrights.
16. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.
17. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendant's Instagram feed, www.instagram.com/ondabeauty. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.
18. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
19. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendant attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by its infringement of Plaintiff's copyright or such damages as are proper;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 504-5, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: April 28, 2022

/s/David C. Deal

David C. Deal

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